Chong Ket Sui David v Datuk Chau Tet On (Chairman and office bearer of Royal Sabah Turf Club for and on behalf of himself and the Management Committee of the Royal Sabah Turf Club)

HIGH COURT (KOTA KINABALU) — CIVIL SUIT NO K 52 OF 1992
SYED AHMAD IDID J
23 JUNE 1993

Unincorporated Associations *— Club — Expulsion of member — Alleged misconduct of member — Disciplinary sub-committee voted to expel member in his absence without due inquiry — Member's request to explain his conduct orally denied — Whether there was breach of rules of natural justice — Whether expulsion was ultra vires the constitution*

Civil Procedure *— Application for declaration — Whether O 14 summary procedure could be invoked — Clarity of application — Rules of the High Court 1980 O 14*

This was an application by the plaintiff under O 14 seeking declarations that the defendants have (i) acted ultra vires the constitution; and (ii) conducted themselves in bad faith in connection with the purported expulsion of the plaintiff. In addition the plaintiff claimed for an order that he be reinstated as a full member of the defendant club. The facts of the case were that the plaintiff being a member of the defendant club was elected to the management committee for 1990. The defendant club was scheduled to hold its bi-annual general meeting on 20 September 1990 and prior to such date, the plaintiff had put out a printed manifesto entitled 'The New Force in Royal Sabah Turf Club — Proposals for Improvement by Team B'. Subsequently two news items appeared in two different Chinese newspapers on 13 September 1990 and 15 September 1990. Within 12 days of the 1990 general meeting, the disciplinary committee of the defendant club met and decided on the action against the plaintiff. A letter dated 16 October 1990 from the defendants' committee was received by the plaintiff on 10 December 1990 and in this letter the defendants' committee had made its finding that the plaintiff had caused the publication of the two news items. On 28 December 1990 the plaintiff requested to explain his conduct orally but this was rejected by the defendants. On 8 January 1991 the plaintiff through his solicitors again requested the committee for an opportunity to be heard orally and sought clarification in relation to the charges against him. The defendants' committee then replied by expelling the plaintiff on 25 January 1991. The plaintiff appealed on 12 February 1991. The following issues were considered by the court: (a) whether the plaintiff had the right to be heard orally; and (b) whether there was 'due inquiry' into the alleged misconduct of the plaintiff.

Held, granting order in terms of the plaintiff's claim:

(1) As regards the first issue, art 24 of the constitution allowed the plaintiff to select the mode, ie oral or in writing. Therefore what the plaintiff requested for was what the constitution allowed him, that is 'an opportunity for oral or written explanation of his conduct', ie the misconduct in question.

(2) When dealing with the expulsion of a member, the defendants must show both that the inquiry was properly conducted and that the expulsion was on good and sufficient grounds. The disciplinary sub-committee of the defendants convened a meeting on 2 October 1990 and the meeting, by a majority, voted to expel the plaintiff. Then the sub-committee decided to afford the plaintiff the opportunity of a written explanation as to why he should not be expelled. Clearly that meeting on 2 October 1990 was not an inquiry as the plaintiff was not present. While no particular number of witnesses shall in any case be required for proof of any fact, it was expected, however, that the defendants should call witnesses to offer evidence and elicit the truth. By failing to call witnesses the defendants have violated the principles of natural justice. Looking at the minutes of the meeting, and with no supporting evidence, the decision of the sub-committee was clearly perverse and devoid of plausible justification.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh plaintif di bawah A 14 untuk deklarasi bahawa defendan telah (i) bertindak secara ultra vires perlembagaan; dan (ii) bertindak dengan niat jahat berkenaan dengan pemecatan plaintif yang didakwa itu. Tambahan lagi, plaintif menuntut satu perintah supaya beliau dikembalikan kedudukannya sebagai ahli penuh kelab defendan itu. Fakta-fakta kes ini adalah bahawa plaintif, seorang ahli kelab defendan, telah dipilih menganggotai jawatankuasa pengurusan untuk tahun 1990. Kelab defendan telah dijadualkan melangsungkan mesyuarat amnya yang diadakan sekali dalam dua tahun pada 20 September 1990 dan sebelum tarikh demikian, plaintif telah mengeluarkan satu manifesto bercetak bertajuk 'The New Force in Royal Sabah Turf Club — Proposals for Improvement by Team B'. Kemudiannya dua laporan akhbar telah diterbitkan di dalam dua suratkhabar Cina yang berasingan pada 13 September 1990 dan 15 September 1990. Dalam masa 12 hari menjelang mesyuarat am 1990 itu, jawatankuasa tatatertib kelab defendan telah bermesyuarat dan membuat keputusan tentang tindakan yang patut diambil terhadap plaintif. Sepucuk surat bertarikh 16 Oktober 1990 dari jawatankuasa defendan telah diterima oleh plaintif pada 10 Disember 1990 dan di dalam surat itu, jawatankuasa defendan telah menggariskan pendapatnya bahawa plaintif telah mengakibatkan penerbitan dua laporan akhbar itu. Pada 28 Disember 1990 plaintif telah meminta kesempatan menerangkan tindakannya secara lisan tetapi ini telah ditolak oleh defendan. Pada 8 Januari 1991 plaintif melalui

peguamcaranya sekali lagi meminta jawatankuasa itu untuk peluang supaya didengar secara lisan dan menuntut penerangan tentang dakwaan-dakwaan terhadapnya. Jawatankuasa defendan telah menjawab dengan memecat plaintif pada 25 Januari 1991. Plaintif merayu pada 12 Februari 1991. Isu-isu yang dipertimbangkan oleh mahkamah adalah seperti berikut: (a) sama ada plaintif mempunyai hak supaya didengar secara lisan; dan (b) sama ada terdapat 'due inquiry' ke dalam salah kelakuan plaintif yang didakwa itu.

Diputuskan, memberikan perintah mengikut tuntutan plaintif itu:

(1) Mengenai isu yang pertama, perkara 24 perlembagaan membenarkan plaintif untuk memilih caranya, yakni secara lisan atau dalam tulisan. Oleh itu apa yang diminta oleh plaintif adalah apa yang dibenarkannya oleh perlembagaan, iaitu 'an opportunity for oral or written explanation of his conduct', iaitu salah kelakuan yang dipersoalkan itu.

(2) Apabila mengambil tindakan berkenaan dengan pemecatan seseorang ahli, defendan mesti menunjukkan kedua-dua sekali bahawa siasatan itu telah dilakukan secara teratur dan bahawa pemecatan itu adalah untuk alasan yang baik dan mencukupi. Jawatankuasa kecil tatatertib defendan mengadakan satu mesyuarat pada 2 Oktober 1990 dan mesyuarat itu, melalui undi majoriti, mengundi untuk memecat plaintif. Kemudiannya jawatankuasa kecil itu membuat keputusan untuk memberikan plaintif peluang membuat penerangan secara bertulis tentang sebab-sebab mengapa beliau tidak patut dipecat. Jelasnya mesyuarat pada 2 Oktober 1990 itu bukanlah satu siasatan kerana plaintif tidak hadir. Sedangkan tidak ada bilangan saksi yang tertentu yang diperlukan dalam mana-mana kes untuk membuktikan sesuatu fakta, ianya boleh diharapkan, walau bagaimanapun, bahawa defendan patut memanggil saksi-saksi untuk memberi keterangan dan untuk memperolehi cerita yang sebenarnya. Kegagalan defendan memanggil saksi-saksi telah melanggar prinsip-prinsip keadilan asasi. Melihat minit mesyuarat itu, dan tanpa keterangan menyokong, keputusan jawatankuasa kecil itu adalah jelasnya tidak berpatutan dan tidak ada alasan yang boleh dipercayai.]

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 02–366–93.]

Cases referred to

1 *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* [1921] 2 AC 438 (refd)

2 *Malayan Insurance (M) Sdn Bhd v Asia Hotel Sdn Bhd* [1987] 2 MLJ 183 (refd)

3 *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 (refd)

4 *Bromley London Borough Council v Greater London Council & Anor* [1983] 1 AC 768; [1982] 1 All ER 153; [1982] 2 WLR 92 (refd)
5 *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204 (refd)
6 *Ridge v Baldwin* [1964] AC 40; [1963] 2 All ER 66; [1963] 2 WLR 935 (refd)
7 *Sarawak Electricity Supply Corporation v Wong Ah Suan* [1980] 1 MLJ 65 (refd)
8 *Local Government Board v Arlidge* [1915] AC 120 (distd)
9 *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203 (refd)
10 *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152 (refd)
11 *B Surinder Singh Kanda v Government of the Federation of Malaya* [1962] MLJ 169 (refd)
12 *Dawkins v Antrobus* (1881) 17 Ch D 615 (distd)
13 *International General Electric Co of New York v Customs and Excise Commissioners* [1962] Ch 784; [1962] 2 All ER 398; [1962] 3 WLR 20 (refd)
14 *Lady Anne Tennant v Associated Newspapers Group Ltd* [1979] FSR 298 (refd)

Clement A Skinner (*Skinner Lind Robertson Willie Wong & Chin*) for the plaintiff.

Mary Gomez (*Koy & Williamson*) for the defendants.

Syed Ahmad Idid J: The plaintiff is a member of the defendant club from 27 June 1988 and was elected to the management committee for 1990. He now seeks declarations that the defendants have (i) acted ultra vires the constitution; and (ii) conducted themselves in bad faith in connection with the purported expulsion of the plaintiff. Additionally, the plaintiff claims for an order that he be reinstated as a full member of the club.

Order 14 — Summary judgment

As a preliminary point, I asked both Mr C Skinner (for the plaintiff) and Ms Mary Gomez (for the defendants) to submit on whether in such an action, O 14 summary procedure can be invoked. Both cited the *Supreme Court Practice* 1988 Vol 1 at p 131 that 'there is no reason why O 14 may not be employed in an action for declaration where the case is clear'. The court has a discretion whether to grant a declaration — *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd.*[1] I therefore have to discern whether the application is clear and for this, in line with the various judgments, I have to decide on both the facts and the question of law. See Hashim Yeop A Sani SCJ in *Malayan Insurance (M) Sdn Bhd v Asia Hotel Sdn Bhd*[2] at p 184E (right column). I shall consciously keep within the directions of Mohamed Azmi SCJ in *Bank Negara Malaysia v Mohd Ismail & Ors*[3] where the court 'must go one step further and determine whether they (the assertion, denial or dispute) are triable'.

Facts

The defendant club holds its general meeting once every two years, and the meeting in question was held on 20 September 1990. The plaintiff put out a printed manifesto which he called 'The New Force in The Royal Sabah Turf Club — Proposals for Improvement' by 'Team B'.

Two news items appeared in the Chinese newspaper *Sabah Shi Pao* on 13 September 1990 and the *Asia Times* on 15 September 1990 (see exhs DC-8 and DC-9 respectively).

Within 12 days of the 1990 general meeting, the disciplinary committee of the defendants met and decided on the action against the plaintiff. A letter dated 16 October 1990 from the defendants' committee was received by the plaintiff on 10 December 1990 and in this letter the committee had made its finding that the plaintiff had caused the publication of the two items. On 28 December 1990, the plaintiff requested to explain his conduct orally but this was rejected by the defendants.

Then according to learned counsel, Mr Skinner, 'on 8 January 1991 the plaintiff wrote back to the committee through his present solicitors' (see exh DC-6). In this letter the plaintiff again requested for the opportunity to be heard orally *and* sought clarification in relation to the charges against him, ie whether it related to the statements per se or that he caused them to be published. 'The clarification was requested so that the plaintiff could properly defend himself before the committee.' Instead of giving some leeway or attention to the plaintiff's letter, the committee then replied by expelling the plaintiff on 25 January 1991. The plaintiff appealed on 12 February 1991.

Issues

(1) Whether the plaintiff had the right to be heard orally (which the plaintiff had requested) and not in writing as the defendants had demanded. Or, as learned counsel for the defendants has put it, whether the plaintiff was given all opportunity of being heard in accordance with the constitution.

(2) Whether there was 'due inquiry' into the alleged misconduct of the plaintiff.

Legal principles

Let me discuss the second issue first. 'Due inquiry' in employment dismissal cases is required by law. See *The Law of Domestic Inquiries and Dismissals* (1993 Reprint) Ch 3. The effect of non-holding (or improper holding) of an inquiry in these cases is that the court may receive evidence to show the misconduct. If the court is then satisfied that the misconduct was actually committed, then the dismissal or termination of services can be confirmed. Here, we deal with expulsion of a member and I am of the view that there must be the initial requirements that the defendants must show both that the inquiry was properly conducted and that the expulsion was on good and sufficient grounds.

From the evidence at exh 1, the minutes of the disciplinary sub-committee of the Royal Sabah Turf Club held on Tuesday 2 October, it is clearly borne out that its objective was to investigate 'malicious allegations and unjust criticisms against the chairman ...'. It appears they had decided on 'malicious' and 'unjust' to describe what may be put to them. And the chairman introduced 'the discussion on whether any disciplinary action should be taken against the full member David Chong ...' (the plaintiff). In fact, reading through the minutes which learned counsel for the defendants has kindly provided but to which learned counsel for the plaintiff objected, the term manifests itself that a decision had been articulated that the plaintiff had 'caused to be published ...' and that 'it was unanimously agreed that the press statements ... were false and malicious'. The meeting, by a majority, voted to expel the plaintiff. Then the sub-committee decided to 'afford Encik Chong the opportunity of a written explanation as to why he should not be expelled'. Clearly that meeting was not an inquiry as the plaintiff was not present.

The court is surprised by the attitude of the defendants when counsel contended that under art 25, the disciplinary committee was not required to call any evidence or witnesses in conducting the inquiry as the provision empowers it to carry out the inquiry 'as it may consider necessary'. How can one inquire if there is no one from whom one can ask questions or query? The defendants decided not to call the reporters nor to interview them. So how could anybody confirm that the plaintiff was the source or originator of the news items much less the guilty party?

While no particular number of witnesses shall in any case be required for the proof of any fact, it is expected, however, that the defendants should call witnesses to offer evidence and elicit the truth. By failing to call witnesses the defendants 'have violated the principles of natural justice' (*Law of Domestic Inquiries and Dismissal*, Pelanduk Publications, p 71). I have considered the judgments in *Bromley London Borough Council v Greater London Council & Anor*[4] and *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor.*[5]

Looking at the minutes, and with no supporting evidence, the decision of the sub-committee was clearly perverse and devoid of plausible justification. It seems to me that no reasonable person could have reached it. Put in another way, here was the new committee taking action against someone who was their opposition during the election campaign. It could not have been just and it could not have been moral nor sociable under the circumstances. Was it opponent-cleansing? In a members club such as the defendants, shades of opinions must be allowed to exist in the better interest of the majority. Oftentimes the minority has good ideas!

I now refer to the plaintiff's request to be heard orally. Can the defendants' rejection of his request be that envisaged by Lord Morris in *Ridge v Baldwin*[6] in that a 'hearing' need not be 'oral'? See *Sarawak Electricity Supply Corporation v Wong Ah Suan.*[7] Referring to *Local Government Board v Arlidge*,[8] where the House of Lords held that the board was not bound to hear the respondent orally, I am of the view that that was decided on somewhat different grounds. In *Najar Singh v Government of Malaysia &*

A *Anor*[9] — 'being heard' meant 'heard orally' and this was all that the plaintiff desired. Raja Azlan Shah FJ (as His Majesty then was) in *Ketua Pengarah Kastam v Ho Kwan Seng*[10] held that 'the hearing may take many forms ...'. What the plaintiff requested for was that which the constitution allows him, that is '... an opportunity for *oral* or written explanation of his conduct', ie the misconduct in question. The plaintiff asked to be heard *orally*. Why B was it so difficult to enable him to speak? Why did the defendants decline giving him such an opportunity? See art 24: '... shall allow the member ... oral ...'. I am of the opinion the article allows the plaintiff to select the mode, ie oral or in writing. This therefore differs from what had been held in *Najar Singh*[9] and it is pertinent here that the plaintiff should have been C given his say at a suitable time, date and venue ... and the matter may have ended there.

I am not, on this score, able to say whether or not the plaintiff could have explained his conduct (or 'misconduct' or allegations against him) away but the crucial question is: why were the defendants unwilling to allow the plaintiff to give his side of the story orally? See *B Surinder Singh Kanda v* D *Government of the Federation of Malaya*.[11] This is fatal and goes against the norms of natural justice.

It seems to me that the victorious management committee was quick on the draw to get rid of the plaintiff who was the only one from Team B to win the election. While it is not improper to enforce discipline, the enforcement E must, however, be properly done. Membership of a club is a right and an asset and as such it must be jealously guarded and protected. The courts cannot sit idly by and watch a group of members taking over a club and the assets by unconstitutional means. While some of the facts seem to be similar to those which occurred in *Dawkins v Antrobus*,[12] I am unable to follow that decision on two grounds:

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(a) in that case, there was proof of the plaintiff's misconduct and he was given the opportunity to be heard but he refused; and

(b) a general meeting of the club, in accordance with the constitution, passed a resolution to expel the plaintiff whereas in our case today both have not been practised.

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There is also no clear evidence of misconduct on the part of the plaintiff.

I accordingly order in terms of the plaintiff's claim dated 17 March 1992. The declaration must be final. *International General Electric Co of New York v Customs and Excise Commissioners*.[13] See also *Lady Anne Tennant v Associated Newspapers Group Ltd.*[14] I can only urge that both the plaintiff and H defendants will bury their hatchet and, with common objective of improving the club, both should be able to contribute and serve well.

I am sorry that my ruling has been delayed due to my recent hospitalization. I hope this has not caused too much problems to counsel and the parties.

I *Plaintiff's claim allowed.*

Reported by Yap Foo Ken